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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130904778-3999-02]

RIN 0648-XC855

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2014-2016 Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements the commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2014, 2015, and 2016. The quotas are unchanged from the quotas for the 2011, 2012, and 2013 fishing years. This action sets allowable harvest levels of Atlantic surfclams and ocean quahogs, prevents overfishing, and allows harvesting of optimum yield.

This action also continues to suspend the minimum shell size for Atlantic surfclams for the 2014 fishing year.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A copy of the Environmental Assessment prepared for this action is available upon request from the Mid-Atlantic Fishery Management (Council), 800 North State Street, Suite 201, Dover, DE 09901.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, 978-281-9177.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Council, specify quotas for surfclam and ocean quahog for a 3-yr period, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 yrs for surfclams, and 30 yrs for ocean quahogs. The Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as Maine mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat., with an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (0.6 to 3.524 million L). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. The Council annually reviews the quota to determine whether the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In recommending these quotas, the Council considered the most recent stock assessments and other relevant scientific information.

In June 2013, the Council voted to recommend maintaining the 2013 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (3.524 million L) for the Maine ocean

quahog fishery for 2014-2016. The quotas for the 2014-2016 Atlantic surfclam and ocean quahog fishery are shown in the table below.

#### FINAL 2014-2016 ATLANTIC SURFCLAM AND OCEAN QUAHOG QUOTAS

Ocean Quahog				
Year	ABC	ACL	ACT	Commercial Quota
2014-2016	5.7 million bu (306 million L)	5.7 million bu (306 million L)	Maine ACT: 105,010 Maine bu (3.7 million L)	Maine Quota: 100,000 Maine bu (3.524 million L)
			Non-Maine ACT: 5.56 million bu (298 million L)	Non-Maine Quota: 5.3 million bu (284 million L)

Atlantic Surfclam				
Year	Allowable Biological Catch (ABC)	Annual Catch Limit (ACL)	Annual Catch Target (ACT)	Commercial Quota
2014	7.8 million bu (415 million L)	7.8 million bu (415 million L)	3.8 million bu (202 million L)	3.4 million bu (181 million L)
2015	6.7 million bu (202 million L)	6.7 million bu (202 million L)	3.8 million bu (202 million L)	3.4 million bu (181 million L)
2016	6.2 million bu (188 million L)	6.2 million bu (188 million L)	3.8 million bu (115 million L)	3.4 million bu (115 million L)

The Atlantic surfclam and ocean quahog quotas are specified in “industry” bushels of 53.24 L per bushel, while the Maine ocean quahog quota is specified in Maine bushels of 35.24 L per bushel. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

Surfclams

In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 yrs (OY = 3.4 million bu (181 million L)). The proposed 2014-2016 status quo surfclam quota was developed after reviewing the results of the Northeast Regional Stock Assessment Workshop (SAW) 56 for Atlantic surfclam, released to the public in 2013. The surfclam quota recommendation is consistent with the SAW 56 finding that the Atlantic surfclam stock is not overfished, nor is overfishing occurring. Based on this information, the Council recommended, and NMFS maintains, the status quo surfclam quota of 3.4 million bu (181 million L) for 2014-2016. This quota represents the maximum allowable quota under the FMP.

#### Ocean Quahogs

In April 2013, the ocean quahog stock assessment was updated and found that the ocean quahog stock is not overfished, nor is overfishing occurring. Ocean quahog is a low productivity stock that is being fished down from its pre-fishery level; however, after several decades of relatively low fishing mortality, the stock is still above the biomass target reference points. This action maintains the status quo quota of 5.333 million bu (284 million L) for 2014-2016.

The 2014-2016 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (3.524 million L). In 2008, the State of Maine completed a stock assessment of the resource within the Maine Mahogany Quahog Zone. The findings of the Maine quahog survey did not change the status of the entire ocean quahog resource. The quotas represent the maximum allowable quota under the FMP.

#### Comments

We received six comments on the proposed rule; five from members of the Atlantic surfclam and ocean quahog industry and one from the general public. All comments supported the quotas in the proposed rule.

## Changes from Proposed Rule to Final Rule

There are no changes from the proposed to final rule.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS finds good cause to waive the 30-day delay in effectiveness period for this action. A delay in the effective date of this final rule would disrupt the surfclam and ocean quahog fisheries and would also likely cause substantial confusion and raise administrative issues. There is no rollover provision in the surfclam and ocean quahog fisheries; therefore, if the specifications are not in place by the start of the fishing year on January 1, 2014, the following would result: (1) No 2014-2016 proposed specifications for these fisheries would be published; (2) the indefinite management measures for each of these species would remain unchanged; (3) there would be no specific cap on the allowable annual catch (i.e., annual catch limits) and landings in each of these fisheries (i.e., no commercial quotas), and (4) individual transferable quota (ITQ) tags would be issued to owners in 2014-2016 (however, these tags would technically have no meaning as the specifications would not be set).

Further, because there is no rollover provision, the only regulatory controls on fishing effort and harvests would be the indefinite measures. These include § 648.14(j), which states that "It is unlawful for any person to do any of the following: Land or possess any surfclams or ocean quahogs harvested in or from the EEZ without having been issued, or in excess of, an individual allocation." Because it prohibits landing or possessing surfclams or ocean quahogs, §

648.14(j), could effectively prohibit the fishery from operating, if quotas were not in place for January 1, 2014. Note that this provision is at odds with § 648.75(b), which requires NMFS to issue tags to ITQ allocation holders prior to the fishing year. Therefore, if NMFS does not waive the delay in effectiveness, NMFS will have already provided ITQ allocation holders with their allocation information and tags that would otherwise allow them to fish, but without quotas being allocated.

ITQ shareholders each receive a portion of the overall annual quotas for the two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota each year. As discussed above, fishing for surfclams and ocean quahogs can potentially begin on January 1, each year, regardless of the publication of the annual quota, as the tags are issued each year prior to January 1, pursuant to § 648.75(b). As such, waiving the 30-day delay in effectiveness would ensure that the quota for surfclams and ocean quahogs is in place for January 1, 2014, thus preventing any conflicts between these regulations. On the contrary, not waiving the 30-day delay in effectiveness would result in tags being issued, with no associated value, as the quotas would not be in place.

Lastly, ITQ allocations are often transferred, either permanently or temporarily, immediately upon the commencement of the fishing year to meet adjust to any new circumstances in the fishery. Without a quota in effect, the industry does not have the ability to transfer allocation either permanently or temporarily. The inability of the industry to make such transfers effective would preclude the intended recipients of such transfers from fishing. Accordingly, a delay in the effectiveness of this rule would be contrary to the rule's intent to maintain current quota levels that have the full support of the fishing industry and that facilitate the transfer of quotas requested by the industry.

The inability to transfer quota would be contrary to the public interest because it would preclude the intended recipients of such transfers from fishing, thereby resulting in a negative economic impact on the industry. Also, not having quotas in effect would cause substantial confusion and could raise legal and enforcement issues, since fishery participants would already have their ITQ allocation tags, but the tags would technically not have any meaning as the specifications would not have been set. Therefore, it is necessary to waive the 30-day delay in effectiveness, as a delay in effectiveness would compromise the start of the fishing year and thereby undermine the intent of this rule, contrary to the public's interest.

This final rule is exempt from the requirements of E.O. 12866.

The Council prepared an EA for this action that analyzes the impacts of this rule. A copy of the EA is available from the Federal e-Rulemaking portal [www.regulations.gov](http://www.regulations.gov). Type "NOAA-NMFS-2013-0139" in the ID field and click search. A copy of the EA is also available upon request from the Council (see ADDRESSES).

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RSA). The FRFA describes the economic impacts this final rule would have on small entities. The FRFA incorporates the IRFA, the RIR, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA and EA are available upon request (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for, this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a

Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments.

NMFS received no comments relative to the IRFA or economic impacts of the proposed 2014–2016 specifications for the Atlantic surfclam and ocean quahog fisheries. No changes were made from the proposed to final rule.

Description and Estimate of the Number of Small Entities to Which this Final Rule Would Apply

The final measures would only affect vessels holding an active Federal open access surfclam and/or ocean quahog permit. The SBA defines a small commercial shellfish fishing entity as a firm with gross annual receipts not exceeding \$5 million. In 2012, 42 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under the IFQ system. In addition, 12 vessels participated in the limited access Maine ocean quahog fishery, for a total of 54 participants in 2012. Average 2012 gross income was \$950,000 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 54 commercial fishing entities fall below the SBA size threshold for small commercial shellfish fishing entities.

Reporting and Recordkeeping Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps Taken To Minimize Economic Impact on Small Entities Specifications

The final quotas for 2014-2016 reflect the same quota levels set for 2011-2013. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the quotas. Leaving the ocean quahog quota at the harvest level of 5.333 million



bu (284 million L) is not expected to constrain the fishery. The surfclam quota is set to the maximum allowed under the FMP of 3.4 million bu (181 million L).

The Maine ocean quahog quota is set at the maximum allowed under the FMP of 100,000 Maine bu (3.524 million L). It is anticipated that by maintaining the status quo quota level for the next 3 years, the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 yrs.

Alternatives to these status quo quotas were considered, but were not adopted. The alternatives would have resulted in more restrictive quotas and would not have been in the best interest of the fishery. In addition, the Council and the industry both support the status quo quotas being adopted in this action. As a result, since the non-selected alternatives would have resulted in a negative impacts to fisheries and would have been contrary to achieving optimum yield, while preventing overfishing, the alternatives were not adopted.

#### Minimum Size Suspension for Atlantic Surfclams

The minimum size limit for surfclams has been suspended since 2005. Therefore, because this action would not impose a minimum size limit, and because no net change in fishing effort, participation in the fishery, or fishery expenses are expected, it is anticipated that this action would not impose any additional costs on the industry. In fact, continuing to suspend the minimum size limit would likely have positive economic affects in contrast to not suspending the minimum size limit, as not suspending the minimum size limit would likely reduce vessel efficiency through time spent measuring and culling small surfclams.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to make to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued either a surfclam or ocean quahog permit, as well as surfclam and ocean quahog dealers. In addition, copies of this final rule and guide (i.e., bulletin) are available from the Regional

Administrator (see ADDRESSES) and may be found at the following Web site:

[www.nero.noaa.gov](http://www.nero.noaa.gov).

Authority: 16 U.S.C. 1801 et seq.

Dated: December 16, 2013.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

